IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 21739 of 2001

Between:

K.Chandramouli son of Sattaiah,aged 35 yrs
Ex conductor, Marriguda (v), Nalgonda district.

..... PETITIONER

AND

1 Andhra Pradesh State Road Transport Corporation Rep. by
its Depot Manager,Pargi, Rangareddy District.

2 The Presiding Officer, The Industrial Tribunal-II
Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, direction or order more particularly one in the nature of Writ of Certiorari calling for records in I.D.No.173 of 1998 on the file of the 2nd respondent and set aside the award dt.30-6-1999 published on 03-09-1999 with a consequential direction to the 1st respondent to reinstate the petitioner into service with continuity of service and all other consequential benefits including back wages.

Counsel for the Petitioner: M/s H.SRINIVASA RAO & VIJAYALAKSHMI

Counsel for the Respondent No.1: MR.VTM PRASAD, STANDING COUNSEL

Counsel for the Respondent No.2: G.P. FOR LABOUR

The Court made the following :

ORDER

Heard Mr.H.Srinivasa Rao, learned counsel appearing on behalf of the petitioner and also Mr.V.T.M.Prasad, learned Standing counsel appearing on behalf of the respondent corporation.

The petitioner herein, who has been working as Conductor with the respondent corporation, filed this Writ Petition *inter alia* seeking to assail the Nil award passed by the 2nd respondent in I.D.No.173 of 1998, dated 30-06-1999 published on 03-09-1999, as bad and illegal.

The case of the petitioner is that he has been in service with the respondent corporation since the year 1991. During a check conducted on 28-02-1994, based on certain irregularities, disciplinary enquiry was initiated against the petitioner and ultimately after holding an enquiry, he was removed from service on 16-08-1994. After exhausting all the remedies, the petitioner raised a dispute under Section 2(A) 2 of the Industrial Disputes Act, 1947 (for short 'the Act') before the 2nd respondent which was taken up as I. D. No. 56 of 1995. After holding an enquiry, the 2nd respondent ultimately confirmed the orders of removal holding that the petitioner is responsible for the allegations made against him. Hence the Writ Petition.

Mr.H.Srinivasa Rao, learned counsel appearing on behalf of the petitioner submits that having regard to the nature of allegations made against the petitioner, the 2nd respondent did not properly exercise the discretion as contemplated under Section 11-A of the Act and even otherwise the charge as framed is contrary to the finding given by it.

The learned Standing counsel appearing on behalf of the respondents sought to sustain the impugned award on the ground that it is only after appreciation of entire evidence and material and admittedly the seriousness of the charge, the petitioner has been denied of such indulgence. Hence it does not call for any interference.

Considering the submissions made and on perusal of material, the only

question which falls for consideration on the facts and circumstances of the case is as to whether the order of removal is sustainable in view of the allegations made against the petitioner?

There is no dispute of the fact that the petitioner was in service with the respondent corporation and during a check made on 28-02-1994 on certain irregularities noticed by the checking authority, the following charges have been made:

> **"Charge No.1**: For having sold 54 tickets No.086/112400 to 086/112454 of Rs.2.75 deno. From the block bearing No.086/112400 to 112499 which are unconnected and unconcerned to your way bill No.0214/94994032 and to Pargi depot duly opening the same in your SR bearing No.4962115 while you were conducting the 6.45 VKB-SSPT D/o service on 28-2-1994 which constitutes misconduct under Reg.2B (x) of APSRTC Employees (Conduct) Reg.1963.
>
> **Charge No.2**: For your attempts to escape from the offence committed which constitutes misconduct under Reg.28 (xxx) of APSRTC (conduct)Reg.1963."

On a bare reading of the above charges, it shows that there is issuance of tickets from different blocks rather than the block which is concerned. After holding an enquiry, it is found that the petitioner was responsible for the alleged irregularities and he was removed from service. While considering the said aspect, it is not found by the 2nd respondent that the ticket blocks from which the tickets have been issued were not supplied by the Depot. Further, the petitioner has not sold the unconcerned tickets and the petitioner service record is satisfactory. On the entire facts surrounding the case, it is seen that prima facie the charge made does not reflect the actual allegations against the petitioner and which also requires to be answered by the petitioner during the course of enquiry. On a bare look of the charges, it reflects only the allegation that there is mistake in issuance of tickets from one block other than the block concerned where the said blocks were not at all issued by the Depot Manager and the petitioner having sold the tickets, he has kept the money. These are all very serious allegations of using unauthorized blocks and also misappropriation

of the amount. However, in spite of the irregularity alleged to have been committed by the petitioner, the charge has been moulded in such a way as if there is issuance of tickets from one block instead of other. That itself shows that the respondent did not pay any attention and did not apply their mind while passing the orders against the petitioner. Except the finding arrived by the 2nd respondent in regard to issuance of tickets from unauthorized blocks, keeping the money and any misappropriation thereof, there is no allegation much less any valid one in respect thereof nor there was any enquiry against the petitioner by giving sufficient opportunity. Therefore, the action of the 1st respondent in removing the petitioner from service was not justified. In the circumstances, it has to be held that the entire process is totally vitiated and no proper explanation is forthcoming on behalf of the 1st respondent as to why proper charges have not been made and no enquiry was conducted. In the absence of proper enquiry and failure to frame proper charges is a valid consideration for exercising discretion under Section 11- A of the Act.

Accordingly, the Writ Petition is allowed setting aside the impugned order. The petitioner shall be reinstated however, without any back wages. It is needless to mention that the petitioner will be entitled to reckon continuity of service. No costs.

05-04-2005

Hsd

That Rule Nisi has been made absolute as above.

Witness, the Hon'ble Sri Bilal Nazki, the acting Chief Justice, on this Tuesday, the Fifth day of April, 2005.

Asst. Registrar

To

1 The Depot Manager, Andhra Pradesh State Road Transport Corporation, Pargi, Rangareddy District.

2 The Presiding Officer, The Industrial Tribunal-II Hyderabad.

3 2 C. Cs to G.P. for Labour,High Court buildings, Hyderabad (OUT)

4 2 CD copies.